IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

APPEAL FROM ORDER NO.1047 OF 2005

WITH

APPEAL FROM ORDER NOS.1048 TO 1050 OF 2005

WITH

CIVIL APPLICATION NOS.1257 TO 1260 OF 2005

A.O.No.1047/05:

Hasmukhlal Shantilal Shah. ....Appellant.

Vs.

Santosh Govind Bhandari & Ors. ....Respondents.

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A.O.No.1048/05:

Babubhai N. Patel. ....Appellant.

Vs.

Santosh Govind Bhandari & Ors. ....Respondents.

....

A.O.No.1049/05:

Naresh B. Patel. ....Appellant.

Vs.

Santosh Govind Bhandari & Ors. ....Respondents.

.....

A.O.No.1050/05:

Kantilal S.Joshi. ....Appellant

Vs.

Santosh Govind Bhandari & Ors. ....Respondents.

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Mr.V.A. Thorat with Mr.Rajan Kakkara for the Appellant.

Mr.H. S.S.Murthy with Ms.Sapna Samant for Respondent Nos.1 to 3

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CORAM : DR.D.Y.CHANDRACHUD, J.

November 28,2005.

P.C. :

An application for ad-interim relief has been rejected by the impugned order dated 28th October 2005.

The Town Planning Scheme has been sanctioned on 28th June 1995 and it came into effect on and from 3rd October 1995. Respondent Nos.1 to 3 are admittedly allottees of Final Plot No.374. The names of the Appellants are not recorded as tenants under the Town Planning Scheme. A notice was issued under Section 89 of the Maharashtra Regional and Town Planning Act, 1966 on 17th November 1997 and it is common ground that an

order has been passed under Section 90 on 20th August 1999. The Appellants instituted proceedings under Article 226 of the Constitution of India (W.P.3224 of 2004). The petition was dismissed as withdrawn. However, the Division Bench clarified in its order dated 13th October 2005 that the Appellants will be at liberty to take out appropriate proceedings in accordance with law. The Municipal Corporation is duty bound to enforce the provisions of the Town Planning Scheme. Prima facie the suits filed to challenge the action that has been adopted under Sections 89 and 90 are barred by virtue of the provisions of Section 149 of the Maharashtra Regional and Town Planning Act, 1966.

According to the Appellants, there was an agreement between them and Respondent Nos.1 to 3 to provide alternate accommodation having regard to the provisions of the Development Control Regulation 33(15). Whether there is in fact a concluded contract between the Appellants and Respondent Nos.1 to 3 will fall for consideration when the Motion is taken up for hearing by the Trial Court. At this stage having regard to the mandatory provisions of Sections 89, 90 and 149 of the M.R.T.P.Act, 1966 the Learned Trial Judge could

not have granted an order of injunction and ad-interim relief was, therefore, correctly declined.

The appeals are dismissed with the clarification that the rival submissions of the parties will be considered by the Learned Trial Judge when the Motion is taken up for hearing. Since there is no ad-interim order in operation during the pendency of the proceedings before the Trial Court, no further protection can be granted in these proceedings.

In view of the disposal of the appeals, the Civil Applications are rendered infructuous which are accordingly disposed of.

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